

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the) Docket No. 2009-0048
Application)
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 of)
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 MOLOKAI PUBLIC UTILITIES,)
 INC.)
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 For review and approval of)
 rate increases; revised rate)
 schedules; and revised rules.)
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)
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PUBLIC UTILITIES
COMMISSION

MOLOKAI PROPERTIES LIMITED'S RESPONSE TO
WEST MOLOKAI ASSOCIATION'S INFORMATION REQUESTS TO MOLOKAI
PROPERTIES, LTD. FILED JANUARY 19, 2010

and

CERTIFICATE OF SERVICE

CHUN KERR DODD BEAMAN & WONG,
a Limited Liability Law
Partnership

ANDREW V. BEAMAN
745 Fort Street, 9th Floor
Honolulu, Hawaii 96813
Telephone: (808) 528-8200

Attorney for MOLOKAI
PROPERTIES LIMITED

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

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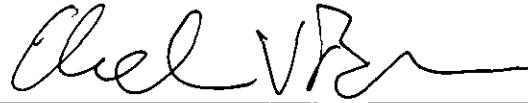
MOLOKAI PROPERTIES LIMITED'S RESPONSE TO
WEST MOLOKAI ASSOCIATION'S INFORMATION REQUESTS TO MOLOKAI
PROPERTIES, LTD. FILED JANUARY 19, 2010

Pursuant to the Order Approving Proposed Procedural Order, as Modified filed herein on November 6, 2009 (the "Procedural Order"), and Exhibit A thereto, MOLOKAI PROPERTIES LIMITED ("MPL"), through its undersigned attorneys, hereby responds to West Molokai Association's Information Requests to Molokai Properties, Ltd. filed herein on January 19, 2010.

MPL objects to the information requests to the extent that they are beyond the scope of and irrelevant to the issues identifies in the Procedural Order, they attempt to unreasonably broaden the issues of this proceeding, and they will unduly delay this proceeding.

In addition, MPL objects to the information requests as vague, ambiguous, unintelligible and unanswerable, given the contrary-to-fact premise prefacing the requests ("ASSUMING MPL TO THE ENTITY DIRECTLY OR INDIRECTLY OWNING AND CONTROLLING ITS SUBSIDIARY AND AFFILIATED COMPANIES . . .") and the instruction that MPL should respond in a similarly contrary-to-fact manner: ". . . THE IR'S SHOULD BE RESPONDED, WHERE THE CONTEXT DICTATES, AS IF MPL IS FUNCTIONING AS THE BOARD OF DIRECTORS OF MPUI." (Emphasis added.)

DATED: Honolulu, Hawaii, January 28, 2010.

A handwritten signature in black ink, appearing to read 'Andrew V. Beaman', written over a horizontal line.

ANDREW V. BEAMAN

Chun Kerr Dodd Beaman & Wong,
a Limited Liability Law
Partnership

Attorneys for MOLOKAI
PROPERTIES LIMITED

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WMA-IR-MPL-101: What specific actions has MPL taken to control inordinate growth of expenses in the following MPUI cost categories:

- a. Fuel expense.
- b. Electricity expenses associated with pumping.
- c. Salaries, wages, and employee benefits.
- d. Vehicles.

Response: MOLOKAI PROPERTIES LIMITED ("MPL") reviews monthly all costs of MOLOKAI PUBLIC UTILITIES, INC. ("MPUI"), takes appropriate action if necessary, and then follows up on action decided. As MPUI has been and currently is cash negative, MPL has no interest in anything other than strict cost control.

Sponsor: Daniel E. Orodener

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WMA-IR-MPL-102: What specific actions have been taken by MPL to assure long-term availability of water to MPUI, with an adequate allocation of total water available from Well 17, to ensure that MPUI has legally enforceable rights to an adequate amount of water to fulfill its service obligations as a certificated public utility company?

Response: See Molokai Public Utilities, Inc.'s Responses to the Division of Consumer Advocacy's First Submission of Information Requests filed herein on November 23, 2009, at CA-IR-5, and Attachment CA-IR-5a submitted therewith.

Sponsor: Daniel E. Orodener

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WMA-IR-MPL-103: What specific actions have been taken by MPL with regard to securing MPUI's right to transport water from Well 17 to the Puunana Treatment Plant, via the Hawaii Department of Agriculture's Molokai Irrigation System (MIS).

Response: See Molokai Public Utilities, Inc.'s Responses to the Division of Consumer Advocacy's First Submission of Information Requests filed herein on November 23, 2009, at CA-IR-6.

Sponsor: Daniel E. Orodener

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WMA-IR-MPL-104: Is MPL aware of the fact that MPUI is one of the few entities -- if not the only entity -- paying transport fees to the Hawaii Department of Agriculture for use of a State-owned irrigation network?

Response: MPL is not aware of all of the relationships and arrangements with the Hawaii Department of Agriculture ("DOA") for the use of a State-owned irrigation network and therefore cannot provide a response. However, with regard to the relationship of MPUI with the DOA, MPUI and MPL have been continuously battling to keep the fees at current or reduced levels. Rates proposed in 2006 by DOA would have increased these transport fees by \$40,000 per annum. There is a current proposal before the DOA that Department of Hawaiian Home Lands take over the administration of the MIS, which would lead to all users, both MPUI and agricultural users, paying vastly increased rates.

Sponsor: Daniel E. Orodener

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WMA-IR-MPL-105: What specific actions has been taken by MPL to open up and pursue negotiations of new terms and conditions more favorable to MPUI, regarding MPUI's continuing use of the MIS, which is administered by the Hawaii Department of Agriculture?

Response: See response to WMA-IR-MPL-104 above.

Sponsor: Daniel E. Orodener

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WMA-IR-MPL-106: Provide MPL's current best estimate of the time period MPL will continue to "land-bank" each of its major Molokai-based assets (e.g. The Lodge, the golf course, the Kaluakoi Hotel, La'au Point).

Response: MPL objects to this information request on the basis that it is beyond the scope of and irrelevant to the issues set forth in the Order Approving Proposed Procedural Order, as Modified filed herein on November 6, 2009 (the "Procedural Order"). In addition, the information request attempts to unreasonably broaden the issues of this proceeding and will unduly delay this proceeding.

Sponsor: Daniel E. Orodener

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WMA-IR-MPL-107: Explain with specificity the policies and directives governing MPL expenditure of funds for short falls in revenues from reduced, or dormant, or non-profitable functions MPL is forced to maintain related to its Molokai holdings. Each of the following should be responded to separately: (a) security, (b) insurance, (c) each form of taxes, (d) mandated operations, and (e) contractual obligations. Please be specific in reference to each type of expense, for each of the subsidiary or affiliated companies of MPL, in order for WMA to better assess MPL's priorities and where MPUI falls within those priorities.

Response: MPL objects to this information request on the basis that it is beyond the scope of and irrelevant to the issues set forth in the Procedural Order. In addition, the information request attempts to unreasonably broaden the issues of this proceeding and will unduly delay this proceeding

Sponsor: Daniel E. Orodener

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WMA-IR-MPL-108: Provide the documentation of the accounting of costs and expenditures related to construction of MPUI's water system, and then provide documentation for the detailed accounting of the proceeds from the sale of partially improved home lots, for MPL's sale of such lots, for the 10 year period extending from 2000 through 2009.

Response: MPL objects to this information request on the basis that it is beyond the scope of and irrelevant to the issues set forth in the Procedural Order. In addition, the information request attempts to unreasonably broaden the issues of this proceeding and will unduly delay this proceeding

Sponsor: Daniel E. Orodener

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WMA-IR-MPL-109: Please provide a detailed inventory of all documents held from MPL and/or any of its subsidiaries/affiliates pertaining to MPUI's physical plant, facilities, pipelines and fixed (stationary) equipment. Said documents might include, but are not necessarily limited to:

- a. Feasibility studies
- b. Engineering studies, analyses and reports
- c. Requests for Proposals (RFP's), Invitations for Bids (IFB's), letter requests for quotations and supporting attachments/data
- d. Construction drawings, specifications and cost estimates
- e. Contracts and Purchase Orders
- f. Building Permits
- g. Shop drawings and similar information furnished for the Owner's approval
- h. "As Built" drawings and specifications
- i. Inspection reports/certificates
- j. Warranties and guaranties
- k. Formal approvals by Hawaii Department of Health or other government agencies

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1. Installation/commissioning instructions, operation and maintenance manuals, etc.

Response: Such records have previously been provided by MPUI in response to other information requests filed herein. MPL objects to this information request on the basis that it is beyond the scope of and irrelevant to the issues set forth in the Procedural Order.

Sponsor: Daniel E. Orodener

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WMA-IR-MPL-110: Please provide a copy of all documents held by MPL and/or any of its subsidiaries/affiliates pertaining to the construction of:

- a. Well 17, pump(s), prime mover, storage tanks and related equipment.
- b. Water storage and treatment facilities, distribution pipelines, meters and ancillary equipment as originally approved for construction within MPU's retail service area or red-lined "as built" thereof (i.e., drawings of record).
- c. Emergency Bypass Line for Moana Makani (CAP KAJ120) constructed by ITC Water Management and placed into service on or about July 01, 2004.
- d. Papohaku Line Bypass (CAP MP105) constructed by ITC Water Management and placed into service on or about July 01, 2004.
- e. Roadways and underground utility pipelines, conduits, improvements, and related equipment, together with easements therefore, throughout MPU's retail service area. (TMK 5-1-002-021, 5-1-003-009, and 5-1-006-157.)

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Response: MPL does not hold any of the documents requested relating to the construction of the assets set forth below. Such documents, if they exist, would be in the possession of MPUI. As may have been indicated in responses previously provided by MPUI herein, many of the documents could not be located, especially where the assets are fully depreciated or near the end of their useful life.

MPL objects to this information request on the basis that it is beyond the scope of and irrelevant to the issues set forth in the Procedural Order. In addition, the information request attempts to unreasonably broaden the issues of this proceeding and will unduly delay this proceeding

Sponsor: Daniel E. Orodener

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WMA-IR-MPL-111: Relative to home lots in the MPUI service, please provide the exact total number of lots, the number of home lots still titled in the name of MPL or MPL-affiliated companies, and the number of lots owned/titled in names of third parties unaffiliated with MPL.

Response: MPL objects to this information request on the basis that it is beyond the scope of and irrelevant to the issues set forth in the Procedural Order. In addition, the information request attempts to unreasonably broaden the issues of this proceeding and will unduly delay this proceeding.

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WMA-IR-MPL-112: Is MPL willing to be bound by an enforceable agreement, to expend a substantial amount of capital (e.g. \$1.0 million) over the next 3-7 year period of time, in order to bring its two water systems up to industry-standards, provided the Commission would allow MPUI and WOMI to "rate base" a majority of such funding if leaks/unaccounted for water losses were reduced to industry standards?

Response: MPL is not aware that MPUI's water systems are not "up to standard." In addition, MPL is not aware of a Commission procedure that would allow MPUI to expeditiously recover a return on and of such an investment. MPL is willing to consider such an investment if it can be shown that it is needed and if MPUI is permitted to expeditiously recover the return of and on the investment and any additional administrative costs of such investment and procedures required to obtain recovery.

Sponsor: Daniel E. Orodenker

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WMA-IR-MPL-113: In terms of 2010 dollars paid in 2010, what amount would MPL pay to County of Maui, for the County to take over the MPUI water system, "lock, stock, and barrel," (i.e. land, easements, rights of way, improvements, leases, operating rights, other intangibles) which transaction, if consummated, would presumably relieve MPL/MPUI/MPUI's consumers of all of MPUI's projected costs for activities such as obtaining a water use permit, MIS payments, continuing operating losses, potentially-mandated repairs related to "L-U" water, etc.

Response: MPL objects to this information request on the basis that it is hypothetical as well as beyond the scope of and irrelevant to the issues set forth in the Procedural Order.

Sponsor: Daniel E. Orodenker

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WMA-IR-MPL-114: Please make accessible to a designated WMA representative, at MPL headquarters in Honolulu or at its corporate law office, for copying by WMA, all as-built drawings for the MPUI service area, related to the design, construction, repair, and replacement of MPUI's facilities, throughout the MPUI service area. [NOTE: This Information Request has been asked in different ways of the County of Maui and MPUI, but as yet, no documents have been received. The sense is that the documents must exist with MPL, as the successor-in-interest of the major developer of the infrastructure. See related IR-MPL-109, 110, and 115.]

Response: MPL does not hold these documents and cannot obtain the information in a timeframe that would not be unduly burdensome. In addition, to the extent the documents are available, they would have been provided in responses to other information requests.

Sponsor: Daniel E. Orodener

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WMA-IR-MPL-115: Please provide all plans, design, as-built drawings, drawings, specifications, schematics, and other submittals from MPUI (and its parent company, or predecessors to MPL, or other MPL affiliated companies), related to the design, construction, and major repairs and improvements of the facilities comprising the MPUI water utility system. [NOTE: MPUI/MPL et al. are presumed to have been required to submit such documents for grading permits, building permits, engineering work, etc.] These documents can be provided electronically, or hard copy, or merely made available to a representative of WMA, upon arrangement.

Response: MPL does not hold these documents and cannot obtain the information in a timeframe that would not be unduly burdensome. In addition, to the extent the documents are available, they would have been provided in responses to other information requests.

Sponsor: Daniel E. Orodener

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WMA-IR-MPL-116: Please state concisely but precisely MPL's legal position relative to federal and state income tax liabilities and credits, normalized treatment of same, and flow-through/flow-down of such tax liabilities and credits, to subsidiaries of MPL as the parent/taxpayer. Consistent with the foregoing, please quantify the tax consequences to such actions, with respect to MPUI.

Response: MPL objects to this information request on the basis that it is beyond the scope of and irrelevant to the issues set forth in the Procedural Order. In addition, the information request attempts to unreasonably broaden the issues of this proceeding and will unduly delay this proceeding.

Without waiving any rights or objections thereto, as MPL understands the treatment of income tax related elements for a utility in a rate proceeding in Hawaii, the utility company should be allowed to recover its "stand-alone" income tax expense on a fully normalized basis. This would be based on the utility's test year pro forma data as adopted by the Commission. The normalization procedure would provide that any tax "benefits"

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that the utility was able to utilize, such as accelerated depreciation and tax credits, would be determined and would be used as an offset to the pro forma rate base in establishing the utility's revenue requirement and related revenue change. MPL also understands that this procedure provides customers with the benefit of the tax deferral provided by the Federal and State tax codes that allow a utility to defer tax expenses that have been included establishing prior revenues to be paid by customers. MPL also believes that, when there have been net operating losses (NOL) for a utility, the utility would still be allowed to recover its test year income tax expenses based on the utility's pro forma data since those prior years' NOL would not have been used to set a utility's revenue requirement and therefore customers did not provide any funds to compensate for those NOL. In instances where a utility has substantial NOL and has not been able to use accelerated depreciation or other tax credits, those elements would not be available to reduce rate base since the utility would not have used those components to reduce income tax expense and customers would not be entitled to ongoing rate base reductions since there would be no benefit.

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Next, with regard to a utility being included in a consolidated income tax filing, the treatment of the foregoing elements does not change. If the consolidated tax filing can use the utility's tax deductions and tax credits, they are preserved for the customer benefit. This is done by allowing the utility to recover the income tax expense and making a rate base reduction for the ADIT and tax credits because those were actually used to reduce consolidated income tax payments. In the unlikely instance where neither the utility (because of NOL) nor the consolidated filing (because of consolidated NOL) can take advantage of the tax deferrals, there would be no rate base reductions for the establishment of a utility's rate base. Finally, MPL understands that, when the rates and revenues charged by a utility do not include a provision for income tax expense, the customers would not have provided any funds to the utility to pay income taxes and therefore could not benefit from any accelerated depreciation or tax credits. The reduction to rate base for the tax deferral on accelerated depreciation is premised on the Commission's normalization procedures which require customers to pay (have included in establishing rates and revenues) income taxes based on book revenue and expenses, since

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the utility is able to defer payment of those taxes based on Federal Tax Code provisions. This deferral provides a cash benefit for the utility that is passed on to the customer. If the customer does not pay rates that include provision for income tax expense, there is no benefit to provide.

Sponsor: Elaine Hammond

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WMA-IR-MPL-117: Re: Fire Hydrants. Does MPL own, maintain, repair or otherwise have involvement with fire hydrants within the MPUI service area? If so, please explain, with specifics.

Response: MPL does not own, maintain, repair or otherwise have involvement with fire hydrants in the MPUI service area.

Sponsor: Daniel E. Orodener

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WMA-IR-MPL-118: Re: Fire Hydrants. Please provide land ownership and/or easement/right-of-way documentation for all of the fire hydrants located within the MPUI service area.

Response: MPL objects to this information request on the basis that it is beyond the scope of and irrelevant to the issues set forth in the Procedural Order. In addition, the information request attempts to unreasonably broaden the issues of this proceeding and will unduly delay this proceeding.

Sponsor: Daniel E. Orodenker

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WMA-IR-MPL-119: How many fire hydrants in MPUI's service area?

How many are inspected and how often?

Response: MPL is unaware of the numbers of fire hydrants in the
MPUI service area.

Sponsor: Daniel E. Orodener

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WMA-IR-MPL-120: Are any reports in MPL's custody related to the condition of fire hydrants within the MPUI service area. If so, please provide.

Response: No.

Sponsor: Daniel E. Orodener

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WMA-IR-MPL-121: With regard to MPUI's entire water system (vis-à-vis the fire hydrants only), when was the most recent inspection of the MPUI system, for any purpose (e.g. for fire protection; for follow-up to Mayor Tavares's 2008 public statements, or any other purpose), for each aspect of the system for fire safety, e.g. pressure, volume, flow, actual storage, potential storage, etc. Provide a copy of each such report -- electronically or in hard copy, or make such studies available to a representative of WMA, at a mutually convenient time.

Response: MPL does not have the information requested.

Sponsor: Daniel E. Orodénker

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WMA-IR-MPL-122: State succinctly what MPL's understanding is as to MPUI's and MPL's current legal responsibilities are with regard to fire prevention, in their respective capacities as owner, developer, operator, water provider, and public utility.

Response: MPL does not have any legal responsibility with regard to fire prevention in MPUI's service area. MPL does not have an opinion regarding MPUI's responsibility.

Sponsor: Daniel E. Orodener

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WMA-IR-MPL-123: Because much of the accounting records of MPUI appear to be compiled, processed, stored and recorded, by MPL, please provide details on MPUI's billing system, generally, (i.e. equipment, software, personnel) and, more specifically, MPUI customer counts, customer bills, revenue by meter size, revenue by any alternative customer category accounting system. To the extent numbers do not reconcile with the Commission approved rates in tariffed categories, please explain the variations of differences.

Response: While MPL personnel maintain certain MPUI accounting and other records, the MPUI billing system and related data is maintained by one of the seven employees directly assigned to the utility operations of MPUI, WOM and MOSCO. (Eight employees are shown on MPUI's salaries and wages workpapers, but the "new" employee #8 on Workpaper 10.1 was not hired.) The billing records are maintained on Molokai for those utilities and provide monthly data, the nature of which has been described in responses by those utilities (MPUI and WOM) stating that, while the data requested is available, it has not been summarized in the form

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requested and the detail would be made available at MPUI's
Molokai location to WMA for it to develop any summaries desired.

Sponsor: Elaine Hammond

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document will be duly served on the following parties, by U.S. mail, postage prepaid, to their last known addresses set forth below, on this date:

MS. CATHERINE P. AWAKUNI (3 copies)
Executive Director
Department of Commerce and Consumer Affairs
Division of Consumer Advocacy
335 Merchant Street, Room 326
Honolulu, HI 96813

MICHAEL H. LAU., ESQ. (1 copy)
YVONNE Y. IZU ESQ.
SANDRA L. WILHIDE, ESQ.
Morihiro Lau & Fong LLP
841 Bishop Street, Suite 400
Honolulu, HI 96813

Attorneys for
MOLOKAI PUBLIC UTILITIES, INC.

MARGERY S. BRONSTER, ESQ. (1 copy)
JEANETTE H. CASTAGNETTI, ESQ.
Bronster Hoshibata
Pauahi Tower, Suite 2300
1033 Bishop Street
Honolulu, HI 96813

Attorneys for
COUNTY OF MAUI

WILLIAM W. MILKS, ESQ. (1 copy)
Law Offices of William W. Milks
American Savings Bank Tower
1001 Bishop Street, Suite 977
Honolulu, HI 96813

Attorney for
WEST MOLOKAI ASSOCIATION

DATED: Honolulu, Hawaii, January 28, 2010.


ANDREW V. BEAMAN

Chun Kerr Dodd Beaman & Wong,
a Limited Liability Law
Partnership

Attorneys for MOLOKAI
PROPERTIES LIMITED